

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JEAN SCHLACHER, ALFRED SCHLACHER,)	
and TERI SCHLACHER ¹ ,)	
)	08 C 2844
Plaintiffs,)	
)	Judge Shadur
v.)	
)	Magistrate Judge Nolan
LAW OFFICES OF PHILLIP J. ROTCHE &)	
ASSOCIATES, P.C.)	
)	
Defendant,)	

**PLAINTIFF’S MOTION TO COMPEL THE DEPOSITIONS OF
WILLIAM G. SLIGAR AND PHILLIP J. ROTCHE**

NOW COMES, Plaintiff Jean Schlacher (“Plaintiff”), by and through her counsel, and motions this Honorable Court to order Defendant Law Offices of Phillip J. Rotche & Associates, P.C.’s, (“Rotche”) to produce William G. Sligar (“Sligar”) and Phillip J. Rotche for their depositions.

Plaintiff’s counsel, Curtis C. Warner, certifies that he in good faith conferred via e-mail and attempted to confer via telephone with Corinne C. Heggie, Rotche’s counsel, having failed to make discovery possible in an effort to obtain it without court action as demonstrated by his efforts below.

Plaintiff’s counsel, Curtis C. Warner, also certifies that after good faith attempts to resolve differences between the parties regarding the deposition dates the parties are unable to reach an accord and counsel's attempts to engage in such consultation via telephone were unsuccessful due to no fault of counsel’s.

¹ On August 1, 2008, final judgments were entered in favor of Plaintiffs Alfred and Teri Schlacher on their FDCPA claims and as such do not take part in this motion, but they along with Jean Schlacher are referred to as (“Plaintiffs”) in this motion when they were at issue in this matter.

In support of this motion, Plaintiff states as follows:

INTRODUCTION

Despite several e-mails and telephone attempts to obtain a date(s) for Sligar and Rotche depositions, Rotche's counsel simply refuses to do so. On July 8, 2008, at the initial status conference in this matter, Plaintiffs' counsel informed the Court that they would be promptly seeking the depositions of two of the persons from Defendant's law office. Rotche's counsel assured the Court that the deponents would promptly be made available. However, Rotche's counsel's representation to this Court and her willingness to produce these deponents are in opposite of each other.

BACKGROUND

On May 16, 2008, Plaintiffs Jean, Alfred and Teri Schlacher filed their Complaint against Rotche alleging various violations of the Fair Debt Collection Practices Act ("FDCPA") arising from Sligar's rude, belittling, and abusive behavior in an attempt to collect a debt. (Dkt. 1). On June 12, 2008, Rotche, though its counsel, moved for an extension of time to answer the Complaint. (Dkt. 11). Plaintiffs' counsel attempted to obtain a Rule 26(f) conference, but Rotche's counsel would not have the conference until the "parties are at issue." On July 7, 2008, Rotche filed its answer to Plaintiffs' Complaint. On July 7, 2008, after Rotche's Answer was filed the parties' counsel conducted the Rule 26(f) conference.

RULE 37 - LOCAL RULE 37.2 ATTEMPTS TO OBTAIN THE REQUESTED DEPOSITIONS

On July 8, 2008, Plaintiffs' counsel issued a notice of depositions. (Appendix 1). The e-mail to Rotche's counsel expressly stated, "If it is determined that any of the requested deponents or their counsel is not available on the day and time scheduled for the depositions, please immediately contact me and provide me with a date in which the deponent and their

counsel is available.” (Id.). The depositions were noticed for July 23, 2008. On July 14, 2008, after the hearing on Plaintiffs’ motion to strike, Rotche’s counsel stated that the July 23, 2008 depositions would not go forward due to her schedule. Later that day Plaintiffs’ counsel wrote:

This e-mail shall serve as a follow up to our conversation today at court. You advised me that the depositions of Mr. Rotche and Mr. Sligar will not be able to go forward on the date and time set due to your schedule. Therefore, please provide me at your earliest convenience 3 alternative dates and times in which the requested deponents would be available. Please be advised that if no response is provided by July 21, 2008, consider this a Rule 37, L.R. 37.2 communication in an attempt to obtain discovery.

(Appendix 2).

On July 22, 2008, Rotche’s counsel responded in part, that they did not have dates for Rotche’s or Sligar’s depositions yet. On July 23, 2008, Plaintiffs’ counsel issued an Amended Notice of Depositions for August 8, 2008. (Appendix 3). On July 24, 2008, Rotche’s counsel notified Plaintiffs’ counsel that she was unavailable that day due to depositions in Waukegan, but promised, “I will confer with Mr. Sligar and Mr. Rotche for three (3) alternative deposition dates.” (Appendix 4, p. 2). On July 25, 2008, Rotche’s counsel propounded written discovery and unilaterally scheduled a video deposition of each Plaintiff for September 16, 2008. *See* (Appendix 5).

Rotche’s counsel having not provided alternative dates for the requested depositions, prompted Plaintiffs’ counsel to contact Rotche’s counsel via telephone. Rotche’s counsel did not answer the telephone and Plaintiffs’ counsel left a voice message requesting a call to discuss the matter. The message was followed up by an e-mail on July 29, 2008. (Appendix 4, p. 2).

On July 30, 2008, Rotche’s counsel, in pertinent part, wrote Plaintiff’s counsel, **“there is no need for me to provide you with the dates Mr. Rotche and Mr. Sligar**

communicated to me.” (Appendix 6, p. 2) (emphasis added). In response Plaintiff’s counsel again requested Rotche’s counsel to call him to discuss the depositions. (Id. p. 1).

On August 1, 2008, Rotche’s counsel noticed the deposition of Plaintiff’s primary care physician, Dr. Yong. (Appendix 7). To date, Rotche’s counsel has contacted Plaintiff’s counsel by telephone regarding the requested depositions.

ARGUMENT

The use of discovery is an important tool to prepare a party’s case. In *United States v. Procter & Gamble Co.*, 356 U.S. 677 (1958), the Court stated that, “[m]odern instruments of discovery serve a useful purpose.... They together with pretrial procedures make a trial less a game of blindman’s bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent. Only strong public policies weigh against disclosure.” *Procter & Gamble Co.*, 356 U.S. at 682. Here, Plaintiff has been simply requesting Rotche to produce two deponents so that she may move for summary judgment on liability and to prepare for trial. Yet despite Plaintiff’s counsel’s attempts to obtain such needed discovery, they have been blocked by Rotche’s counsel’s refusal to provide even one deposition date.

Rule 32 permits the use of depositions in civil matters. *See generally* FED. R. CIV. P. 32. Plaintiff desires to take the depositions of Sligar and Phillip J. Rotche to use in this matter. Plaintiff has been wrongfully denied the opportunity to conduct discovery needed to prosecute her claims in this matter.

CONCLUSION

WHEREFORE, Plaintiff requests this Honorable Court to enter an order requiring Sligar and Rotche to be presented for their depositions within 10 days of a hearing on this motion

and such other relief as this Court feels appropriate.

Respectfully submitted,

s/ Curtis C. Warner
Curtis C. Warner

Curtis C. Warner
Warner Law Firm, LLC
Millennium Park Plaza
155 N. Michigan Ave. Ste. 737
Chicago, Illinois 60601
(312) 238-9820 (TEL)

Colleen M. McLaughlin
Law Offices of Colleen M. McLaughlin
1751 S. Naperville Rd., Ste. 209
Wheaton, IL 60187
(630) 221-0305 (TEL)

Dmitry N. Feofanov
ChicagoLemonLaw.com, P.C.
404 Fourth Avenue West
Lyndon, IL 61261
(815) 986-7303 (TEL)

APPENDIX 1

Subject: 08-cv-02844 Schlacher et al v. Law Offices of Phillip J. Rotche

Date: Tuesday, July 8, 2008 6:24 AM

From: Curt Warner <cwarner@warnerlawllc.com>

To: Corinne C Heggie <cheggie@hinshawlaw.com>, Colleen McLaughlin
<colleen@cmmclaw.com>, Dmitry Feofanov <Feofanov@ChicagoLemonLaw.com>

Conversation: 08-cv-02844 Schlacher et al v. Law Offices of Phillip J. Rotche

Attached please find the notice of depositions in this matter.

If it is determined that any of the requested deponents or their counsel is not available on the day and time scheduled for the depositions, please immediately contact me and provide me with a date in which the deponent and their counsel is available.

Curtis Warner | **Admitted in Illinois & Michigan**

Warner Law Firm, LLC
Millennium Park Plaza
155 N. Michigan Ave. Ste. 737
Chicago, Illinois 60601
tel. 312.238.9820
fax. 312.638.9139
web. www.warnerlawllc.com

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Any tax advice contained in this email was not intended to be used, and cannot be used, by you (or any other taxpayer) to avoid penalties under the Internal Revenue Code of 1986, as amended.

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JEAN SCHLACHER and TERI SCHLACHER,)	
)	08 C 2844
Plaintiffs,)	
)	Judge Schader
v.)	
)	Magistrate Judge Nolan
LAW OFFICES OF PHILIP J. ROTCHE &)	
ASSOCIATES, P.C.)	
)	
Defendant.)	

NOTICE OF DEPOSITIONS

TO: David M. Schultz dschultz@hinshawlaw.com
Corinne C. Heggie cheggie@hinshawlaw.com
HINSHAW & CULBERTSON LLP
222 North LaSalle Street, Suite 300
Chicago, Illinois 60601

PLEASE TAKE NOTICE that pursuant to Federal Rules of Civil Procedure that on **Tuesday, July 29, 2008**, Plaintiffs will take the depositions of the persons listed below in the above-captioned matter upon oral examination before a court reporter at Warner Law Firm, LLC, 155 N. Michigan Ave., Suite 737, Chicago, Illinois 60601:

Deponent

Time

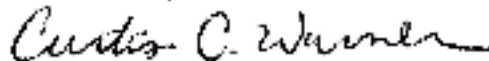
1. William G. Sligar

9:00 a.m.

2. Phillip J. Rotche

Immediately following the
first deposition.

Submitted,



Curtis C. Warner

Curtis C. Warner cwarner@warnerlawllc.com
Warner Law Firm, LLC
155 N. Michigan Avenue, Suite 737

APPENDIX 2

Subject: Schlacher v. Rotche

Date: Monday, July 14, 2008 3:56 PM

From: Curt Warner <cwarner@warnerlawllc.com>

To: Corinne C Heggie <cheggie@hinshawlaw.com>, Colleen McLaughlin <colleen@cmmclaw.com>, Dmitry Feofanov <Feofanov@ChicagoLemonLaw.com>

Conversation: Schlacher v. Rotche

Corrine:

This e-mail shall serve as a follow up to our conversation today at court. You advised me that the depositions of Mr. Rotche and Mr. Sligar will not be able to go forward on the date and time set due to your schedule. Therefore, please provide meat your earliest convenience 3 alternative dates and times in which the requested deponents would be available. Please be advised that if no response is provided by July 21, 2008, consider this a Rule 37, L.R. 37.2 communication in an attempt to obtain discovery.

I look forward to the deponents availability.

Redacted Fed. R. Evid. 408

Regards,

Curt

Curtis Warner | Admitted in Illinois & Michigan

Warner Law Firm, LLC
Millennium Park Plaza
155 N. Michigan Ave. Ste. 737
Chicago, Illinois 60601
tel. 312.238.9820
fax. 312.638.9139
web. www.warnerlawllc.com

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Any tax advice contained in this email was not intended to be used, and cannot be used,

APPENDIX 3

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JEAN SCHLACHER and TERI SCHLACHER,)	
)	08 C 2844
Plaintiffs,)	
)	Judge Schader
v.)	
)	Magistrate Judge Nolan
LAW OFFICES OF PHILLIP J. ROTCHE &)	
ASSOCIATES, P.C.)	
)	
Defendant.)	

AMENDED NOTICE OF DEPOSITIONS

TO: David M. Schultz dschultz@hinshawlaw.com
Corinne C. Heggie cheggie@hinshawlaw.com
HINSHAW & CULBERTSON LLP
222 North LaSalle Street, Suite 300
Chicago, Illinois 60601

PLEASE TAKE NOTICE that pursuant to Federal Rules of Civil Procedure that on **Friday, August 8, 2008**, Plaintiffs will take the deposition of the persons listed below in the above-captioned matter upon oral examination before a court reporter at Esquire Deposition Services, 311 West Monroe Street, Suite 1200, Chicago, Illinois 60606. The examination of William G. Sligar shall be done also by video deposition by Esquire Deposition Services.

Deponent

Time

- | | |
|--|------------|
| 1. Willam G. Sligar (video deposition) | 10:00 a.m. |
| 2. Phillip J. Rotche | 12 noon |

Submitted electronically,

Curtis C. Warner
Curtis C. Warner

Curtis C. Warner cwarner@warnerlawllc.com
Millennium Park Plaza
Warner Law Firm, LLC
155 N. Michigan Avenue, Suite 737
Chicago, Illinois 60601
(312) 238-9820 (TEL)

APPENDIX 4

Subject: Re: Schlacher

Date: Tuesday, July 29, 2008 1:49 PM

From: Curt Warner <cwarner@warnerlawllc.com>

To: Corinne C Heggie <cheggie@hinshawlaw.com>

Cc: Colleen McLaughlin <colleen@cmmclaw.com>, "David M. Schultz" <dschultz@hinshawlaw.com>, Elissa <elissa@cmmclaw.com>, Dmitry Feofanov <Feofanov@ChicagoLemonLaw.com>

Conversation: Schlacher

Corinne:

It has been almost a week since this e-mail below and you have not provided any alternative deposition dates. I have called and left a message to speak with you personally, but you have not returned my call to discuss the depositions of Mr. Sligar and Mr. Rotche.

I was informed that in open Court on the initial status call you indicated that the requested deponents would be promptly produced. Each proposed time you have cited a conflict and failed to provide any alternative dates. According to your firm's website your firm has 100's of attorneys and a supervising partner who has his appearance as an attorney of record in this case who has also appeared on the only FDCPA case to reach the Supreme Court. However none of them apparently can attend the defense of the August 8 depositions.

You now have recently issued written discovery to Plaintiffs and have scheduled their video taped depositions. Apparently you are posturing to litigate this case.

As such, in absence of a Protective Order issued by the Court, I am not canceling the noticed depositions for August 8, 2008 in this matter and they will move forward as scheduled.

Regards,

Curtis Warner | Admitted in Illinois & Michigan

Warner Law Firm, LLC
Millennium Park Plaza
155 N. Michigan Ave. Ste. 737
Chicago, Illinois 60601
tel. 312.238.9820
fax. 312.638.9139
web. www.warnerlawllc.com

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Any tax advice contained in this email was not intended to be used, and cannot be used, by you (or any other taxpayer) to avoid penalties under the Internal Revenue Code of 1986, as amended.

On 7/24/08 8:59 AM, "Corinne C Heggie" <cheggie@hinshawlaw.com> wrote:

Curtis

I have depositions in Waukegan, IL on Friday August 8, 2008.

I will confer with Mr. Sligar and Mr. Rotche for three (3) alternative deposition dates.

Corinne

Corinne Cantwell Heggie
HINSHAW & CULBERTSON LLP
222 North LaSalle Street
Suite 300
Chicago, Illinois 60601-1081
tel: (312) 704-3626
fax: (312) 704-3001

Curt Warner <cwarner@warnerlawllc.com> 07/23/2008 04:59 PM

Corinne C Heggie <cheggie@hinshawlaw.com>, "David M. Schultz"
<dschultz@hinshawlaw.com>

To

Colleen McLaughlin <colleen@cmmclaw.com>, Dmitry Feofanov
<Feofanov@ChicagoLemonLaw.com>, Elissa <elissa@cmmclaw.com>

cc

Re: Schlacher

Subject

APPENDIX 5

HINSHAW

& CULBERTSON LLP

Corinne C. Heggie
312-704-3626
cheggie@hinshawlaw.com

July 25, 2008

VIA EMAIL

Curtis C. Warner
Warner Law Firm LLC
151 N. Michigan Avenue
Apt. #3714
Chicago, IL 60601
cwarner@warnerlawllc.com

***Re: Schlacher, et al. v. Law Offices of Phillip J. Rotche & Associates
Case No.: 08 CV 2844***

Dear Mr. Warner:

Attached please find the following:

- Defendant's Rule 68 Offer of Judgment;
- Written discovery directed to plaintiffs; and
- Deposition notices for plaintiffs.

Very truly yours,

Hinshaw & Culbertson LLP
/s/Corinne C. Heggie

Corinne C. Heggie

CCH:rl
Attachments

cc: David M. Schultz (w/o attachments)

ATTORNEYS AT LAW

222 North LaSalle Street
Suite 300
Chicago, IL 60601-1081

312-704-3000
312-704-3001 (fax)
www.hinshawlaw.com

APPENDIX 6

Subject: Re: Schlacher

Date: Wednesday, July 30, 2008 10:38 AM

From: Curt Warner <cwarner@warnerlawllc.com>

To: Corinne C Heggie <cheggie@hinshawlaw.com>

Cc: Colleen McLaughlin <colleen@cmmclaw.com>, "David M. Schultz" <dschultz@hinshawlaw.com>, Elissa <elissa@cmmclaw.com>, Dmitry Feofanov <Feofanov@ChicagoLemonLaw.com>

Conversation: Schlacher

Connie:

Please provide me at your earliest convenience the dates that Mr. Rotche and Mr. Sligar can be presented for their depositions so that we can send you a formal notice of depositions.

Regards,

Curtis Warner | Admitted in Illinois & Michigan

Warner Law Firm, LLC
Millennium Park Plaza
155 N. Michigan Ave. Ste. 737
Chicago, Illinois 60601
tel. 312.238.9820
fax. 312.638.9139
web. www.warnerlawllc.com

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On 7/30/08 10:11 AM, "Corinne C Heggie" <cheggie@hinshawlaw.com> wrote:

Curtis

The e-mail you reference below is dated 7/24. A week from 7/24 is not today. It is Thursday, 7/31.

You left me a phone message the morning of 7/29.

It is reasonable to allow someone at the very least 24 hours to have the opportunity to respond to a voice mail.

I am handling the depositions in this matter. I am not available on August 8 and so notified you last week because of depositions scheduled in Waukegan, Illinois. Now, you advise that you intend to proceed with depositions in this case on August 8th. That is your decision to conduct depositions with no deponents and there is no need for me to provide you with the dates Mr. Rotche and Mr. Sligar communicated to me. Should you change your mind, please let me know so I can advise you of deposition dates.

As to our Offer of Judgment, you cannot partially accept it. Our Offer was to settle the entire case as to all plaintiffs' not to create piece meal litigation out of the complaint.

Finally, please provide me with Jean Schlacher's date of birth and social security number so a subpoena for her medical records from Dr. Gary Yong can be issued. Please know that I will not circulate her social security number to anyone other than my assistant who be helping me get the records.

Corinne

Corinne Cantwell Heggie
HINSHAW & CULBERTSON LLP
222 North LaSalle Street
Suite 300
Chicago, Illinois 60601-1081
tel: (312) 704-3626
fax: (312) 704-3001

Curt Warner <cwarner@warnerlawllc.com> 07/29/2008 01:49 PM

Corinne C Heggie <cheggie@hinshawlaw.com>

Colleen McLaughlin <colleen@cmmclaw.com>, ""David M. Schultz""

To

cc

APPENDIX 7

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Jean Schlacher, Alfred Schlacher and Teri Schlacher)
vs) No. 08 CV 2844
Law Offices of Phillip Rotche & Associates)
JUDGE: Shadur)

NOTICE OF DEPOSITION

TO: **All Counsel Of Record**
(See Attached Service List)

DEPONENT: **Dr. Gary Yong**

You are hereby notified that pursuant to the provisions of Rules of Civil Procedure for District Courts of the United States, the deposition of the above-named deponent will be taken for the purpose of discovery before a Notary Public in and for the State of Illinois on;

DATE: **September 3, 2008** TIME: **1:00 p.m.**

ADDRESS: **Hinshaw & Culbertson LLP** ROOM: **300**
222 North LaSalle Street
Chicago, Illinois 60601

wherein oral interrogatories will be propounded to the said **witness** AT WHICH TIME AND PLACE YOU MAY APPEAR IF YOU SEE FIT. A copy of the subpoena served upon the witness is attached.

HINSHAW & CULBERTSON LLP

Attorneys **Corinne C. Heggie**

Phone 312-704-3626

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

The undersigned, being first duly sworn on oath, deposes and says that he/she served a copy of the foregoing Notice to those person(s) to whom it is addressed by via email, on the 1st day of August, 2008.

Elaine R. Harris

SUBSCRIBED and SWORN to before me
this 1st day of August, 2008.

Elaine R. Harris

Notary Public

